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August 30, 1999

Chairman William Kennard
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

OFFICE OF THE CHAIRMAN

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ex Parte Filing in cases WT 99-217, CC 96-98

Dear Chairman Kennard:

The rules proposed in the referenced cases are noble causes at first glance. As one looks deeper into the practicality and ramifications of these rules, it becomes clear that these proposed rules should not be adopted. The rules are a solution in search of a problem. I urge you to block the adoption of the proposed rules that would allow a phone company to access a private structure without the approval of the owner.

In some states, 70 or more new phone companies have been certified to provide service. Add in the wireless phone companies and under your rule you may have 100 companies allowed to place their wires in a building, and their antennas on the roof, all without the property owner's permission.

The FCC lacks the authority to do this. It would violate basic property rights; a property owner, city or condominium has the right to control who comes on their property. Congress did not give the FCC the authority to condemn space for 100 phone companies in every building in the country.

The FCC cannot preempt state and local building codes, zoning ordinances, environmental legislation and other laws affecting antennas on roofs. Zoning and building codes are purely matters of state and local jurisdiction, which under Federalism and the Tenth Amendment you may not preempt.

Similarly, zoning laws are matters of local concern which protect and promote the public health, safety and welfare, ensure compatibility of uses, preserve property values and the character of our communities. We may restrict the numbers, types, locations, size and aesthetics of antennas on buildings (such as requiring them to be properly screened) to achieve these legitimate goals, yet see that needed services are provided. This requires us to balance competing concerns, which we do every day, with much success. Everyone wants garbage picked up, but no one wants a transfer station. Everyone wants electricity, but no one wants a substation near his or her home.

Gayle A. Smolinski
Mayor

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Linda J. McDermott
Village Clerk

The application of zoning principles is highly dependent on local conditions. These vary greatly state by state, from municipality to municipality and within municipalities. We have successfully applied these principles and balanced competing concerns for eighty years. Zoning has not unnecessarily impeded technology or the development of our economy, nor will it here. There is simply no basis to conclude that for a brand-new technology (wireless fixed telephones) with a minuscule track record that there are problems on such a massive scale with the 38,000 units of local government in the U.S. as to warrant Federal action.

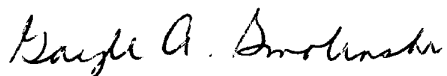
On rights of way, local management of them is essential to protect the public health, safety and welfare. Congress has specifically prohibited you from acting in this area.

We believe the telephone providers' complaints about rights-of-way management and fees are overblown, as show by the small number of court cases on this, only about a dozen nationwide in the three years since the 1996 Act. With 38,000 municipalities nationwide and thousands of phone companies this number of cases shows that the system is working, not that it is broken.

Finally, we are surprised that you suggest that the combined Federal, state and local tax burden on new phone companies is too high. The FCC has no authority to affect state or local taxes any more than it can affect Federal taxes.

For these reasons please reject the proposed rule and take no action on rights of way and taxes.

Very truly yours,



Gayle A. Smolinski
President
Village of Roselle

cc:

U.S. Senator Durbin
U.S. Senator Fitzpatrick
U.S. Representative Hyde
U.S. Representative Crane
Federal Communications Commissioners
Wireless Telecommunications Bureau
DuPage Mayors and Managers

International Transcription Services
U.S. Conference of Mayor
National League of Cities
National Association of Counties
NATOA
BOCA International
NW Municipal Conference

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